IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 2149 of 2006

TO

SPECIAL CRIMINAL APPLICATION No. 2153 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RASIKLLA DALPATRAM THAKKAR - Applicant(s)
Versus
THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR IH SYED for Applicant(s) : 1,
MR PD BHATE APP for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2 - 3.
MR K.G. VAKHARIA with MS AVANI S MEHTA for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 15/03/2007

ORAL JUDGMENT

1.0 While issuing Notice on 22.12.2006, this Court had stayed the further investigation with respect to the impugned complaints till the returnable date and the same was extended from time to time. Today, when the matter was called out, Mr. I. H. Syed learned Advocate for the petitioner produced on record Draft Amendment in each of the petitions praying to amend the Prayer Clause by incorporating the following Paragraph in each of the petitions;

> "14(BBB) : This Hon'ble Court be pleased to issue a Writ of Certiorari, or any other Writ, order, direction *to quash and set aside the Enquiry Case No. 21 of 2003 filed before the learned Chief Metropolitan Magistrate, Ahmedabad* and further be pleased to quash and set aside the order directing investigation u/s. 156(3) of the Cr.P.C. by the learned Chief Metropolitan Magistrate in the Enquiry Case No. 21 of 2003 and be pleased to quash and set aside the proceedings arising out of the same".

1.1 Looking to the relief which is sought by way of Draft Amendment, it would be relevant to refer to the reliefs claimed in these petitions, which read as under;

> "A. Your Lordship be pleased to allow the present petition and further be pleased to issue a Writ of Mandamus or any other appropriate Writ, order of

direction directing the State of Gujarat *to transfer the investigation arising out of M. Case No. 10 of 2005 lodged at Gandhinagar Zone Police Station, State CID [Crime] to any police investigating agency of Mumbai*.

B. Your Lordship be pleased to quash and set aside the order dated 09.07.2003 directing the police to investigate the offence as per Section 156(3) of the Cr.P.C., and further be pleased to quash and set aside the order dated 31.05.2006 passed by the learned Chief Metropolitan Magistrate, Ahmedabad in M. Case No. 10 of 2005 and also be pleased to quash and set aside the order dated 22.09.2006 passed by the learned City Sessions Judge, Ahmedabad in Criminal Revision Application No. 262 of 2006".

C. ....

D. ....

E. ....

1.2 The reliefs as prayed for in these petitions can be granted only by exercising powers under Article 226 & 227 of the Constitution of India. The amendment which is sought for, by way of these Draft Amendments, is essentially one which could be granted only by exercising powers u/s. 482 of the Code of Criminal Procedure, 1908 [for short, "the Code"]. Thus, the amendment which is sought for by way of the Draft Amendment is contrary to the reliefs claimed in these petitions. Apart from that the relief that

is sought for by way of Draft Amendment is to quash and set aside the impugned complaints. The impugned complaints have been filed in July 2003 and the relief of quashing the said complaints, by way of Draft Amendment has been made today only, i.e. after a period of almost four years. Therefore, on the ground of delay also, the Draft Amendment cannot be granted. Moreover, the order dated 09.07.2003 passed by the learned Chief Judicial Magistrate, Ahmedabad was not challenged until 26.06.2006, i.e. when the revision application was filed before the City Civil & Sessions Court, Ahmedabad and, therefore, at this stage, it would not be appropriate to entertain the Draft Amendment. Hence, the Draft Amendment is rejected.

2.0 Common questions on law and facts arise in these petitions and, therefore, they are disposed of by this common judgment.

3.0 The brief facts giving rise to the filing of these petitions are as under;

3.1 Respondent – Madhavpura Mercantile Co-operative

Bank Ltd., [hereinafter referred to as “the Bank” for the sake of brevity] is a Co-operative Bank having its Registered as well as Head Office at Madhupura Market, Shahibaug, Ahmedabad and carrying on banking activities in the State of Gujarat as well as other parts of the country. One of such Branches of the respondent - Bank is situated at Mandvi in the City of Mumbai, Maharashtra. The respondent - Bank is governed by the provisions of the Multi State Co-operative Societies Act, 2002. All the activities of the respondent – Bank, i.e. starting from the approval of the loan application, its sanction, disbursement etc., is done from the Head Office at Ahmedabad.

3.2 The petitioner's Company took some financial assistance from the respondent – Bank in and around the year 1992. On account of the prevailing market conditions, the respondent - Bank had to closed down its business operations somewhere in the year 2001. Thereafter, a Board of Management [Administration] was formed by the Central Registrar, Co-operative Societies, New Delhi for the purpose of executing the Scheme of re-construction, as approved by the Reserve Bank of India.

3.3 After going through the records of the Bank, the new Board of Management [Administration] came to the conclusion that a lot of irregularities had been committed in the sanctioning of the loans and its disbursement without following the due procedure as prescribed by the Reserve Bank of India. It was also realized that the said irregularities had taken place only because of the illegal activities of the borrowers who had connived with the then Chief Executive Officer, Managing Director and Chairman of the respondent – Bank. Therefore, several criminal complaints came to registered for offence punishable u/s. 406, 409, 420, 467, 471 and 120-B of the Indian Penal Code, 1860 [for short, "the IPC"] against the borrowers along with the then Chief Executive Officer, Managing Director and Chairman of the respondent – Bank.

3.4 Five such complaints were filed against the petitioner on 09.07.2003, who was one of such Borrower, before the Court of learned Chief Metropolitan Magistrate, Ahmedabad, which were registered as M. Cases referred to hereinabove. On the said complaints, the learned Chief Metropolitan Magistrate, Ahmedabad directed the Economic Offences Wing, State CID [Crime], Ahmedabad to carry out investigation u/s. 156(3) of the Code.

After completion of the investigation, the investigating agency filed Report stating that the alleged offence has been committed within the territorial limits of the City of Mumbai, Maharashtra and, therefore, the investigation into the alleged offence be transferred to the investigating agency in Mumbai, Maharashtra and the 'C' Summary Report be approved.

3.5 After perusing the said Report, the learned Chief Metropolitan Magistrate, Ahmedabad rejected the same vide order dated 31.05.2006 and directed the investigating agency to carry out further investigation and report as to whether the offence as alleged has been committed or not. Against the said order passed by the learned Chief Metropolitan Magistrate, Ahmedabad the petitioner preferred revision application before the City Civil & Sessions Court at Ahmedabad. However, the said application was also rejected by the learned City Sessions Judge, Court No. 11, Ahmedabad vide judgment and order dated 22.09.2006. Being aggrieved by the same, the petitioner has approached this Court by way of these petitions.

4.0 Mr. I. H. Syed learned Advocate for the petitioner

submitted that the petitioner had availed of the loan in question from the Mandvi Branch of the respondent – Bank which is situated in the City of Mumbai and that it is an independent entity registered under the Maharashtra Co-operative Societies Act. Learned Advocate submitted that the said amount of loan was also disbursed by the said Branch in the City of Mumbai.

4.1 Learned Advocate submitted that since the offence alleged has been committed in Mumbai, the alleged property has been retained in Mumbai and recovery, if any, is to be effected from Mumbai, no cause of action can be said to have arisen in the State of Gujarat. Hence, the entire investigation is required to be done by the police agency in the City of Mumbai since the offence alleged has taken place within the territorial limits of the City of Mumbai.

4.2 Learned Advocate submitted that pursuant to the order of learned Chief Metropolitan Magistrate, Ahmedabad directing to hold investigation u/s. 156(3) of the Code, the investigating agency submitted its Report wherein, it was categorically stated that since the offence alleged has been committed within the territorial limits of the City of Mumbai, the Courts in Mumbai only have jurisdiction

to entertain the impugned complaints. Learned Advocate submitted that, however, the learned Chief Metropolitan Magistrate, Ahmedabad has committed serious error in law in rejecting the said Report in spite of the findings of the investigating agency that no cause of action had arisen within the State of Gujarat.

4.3 Learned Advocate for the petitioner has sought reliance on the provisions of the Bombay Police Manual / Special Organizations and submitted that the Officers of the Criminal Investigation Department are specialized Officers and that they are deputed to assist the local Police in the detection of crimes. Learned Advocate submitted that after carrying out extensive investigation into the alleged offence, the investigating agency submitted its Report praying for the grant of the 'C' Summary. Learned Advocate submitted that when the investigating agency, which is the State CID [Crime], had arrived at a conclusion that no cause of action had arose within the State of Gujarat, the learned Chief Metropolitan Magistrate, Ahmedabad ought not to have rejected the Report and ordered further investigation. Hence, the Courts below have committed serious error in law and on facts in rejecting the case of the petitioner.

4.4 Learned Advocate for the petitioner has placed reliance on the provisions of The Banking Regulation Act, 1949 and, more particularly, on the definition of "branch" / "branch office" which reads as under;

> ""Branch" or "Branch Office", in relation to a banking company, means any branch or branch office, whether called a pay office or sub-pay office or by any other name, at which deposits are received, cheques cashed or moneys lent, and for the purposes of section 35 includes any place of business where any other form of business referred to in sub-section (1) of section 6 is transferred".

5.0 Learned Advocate for the petitioner has relied upon a decision in the case of ***The Shamrao Vithal Co-operative Bank Ltd., v. Kasargod Pandhuranga Mallya*** reported in ***(1972) 4 S.C.C. 600***. In that case, the Co-operative Society was having its Head Office in Bombay and a Branch in Madras. On the facts of the case, it was held that the Registrar, Bombay has no jurisdiction to give an award in respect of a claim concerning the Madras Branch made by the Society under Section 54 of the Bombay Co-operatives Societies Act against a Member residing in Madras and that the dispute would be adjudicated under the Madras Co-operative

Societies Act, 1932.

5.1 Learned Advocate has next relied upon a decision of the Punjab & Haryana High Court in the case of ***Madan Lal v. State of Haryana*** reported in ***1984 (3) Crimes 233*** wherein it has been held that a trial of an offence stands vitiated if not tried by the Court within whose jurisdiction it was allegedly committed.

5.2 Learned Advocate has next relied upon a decision of the Kerala High Court in the case of ***Sri. Commen Koshy v. State of Kerala & ors.*** reported in ***1989 (3) Crimes 385.*** In that case the offence alleged against the petitioner was that the petitioner had obtained a second Passport from the Bombay Passport Office at a time when the Passport issued by the Kerala Passport Office was still valid. The Court held that the investigation of the case by Kerala Crime Branch was unwarranted as no part of the activities constituting the alleged offence took place within the local limits of the Court in Kerala.

5.3 Learned Advocate has next relied upon a decision of the Delhi High Court in the case of ***Jai Prakash v. Dinesh Dayal &***

anr. reported in ***1991 Cri. L. J. 418.*** In that case the petitioner was carrying on business at 'A' place in the State of U.P. and an agreement was entered between the petitioner and complainant for the supply of goods to the the branch office of the complainant at 'A' and several invoices were also issued by the petitioner to the branch office at 'A'. However, on account of some dispute, a complaint came to be filed against the petitioner at New Delhi. On the facts of the case, it was held that simply because the Head Office of the complainant was situated at that place, the Court at New Delhi had no jurisdiction to entertain the complaint.

5.4 Learned Advocate has next relied upon a decision of the Calcutta High Court in the case of ***S. R. Sharma v. The State of West Bengal & anr.*** reported in ***1993 Cri. L. J. 831*** wherein it has been held that though the offence of criminal breach of trust was committed and money was received, retained and misappropriated by accused at the place where the branch office was situated, the accused is not liable to account for at the Head Office and that the Court at the place of branch office has jurisdiction to try the offence.

5.5 Learned Advocate has next relied upon a decision in the case of ***Satvinder Kaur v. State [NCT of Delhi]*** reported in ***1999 (0) G.L.H.E.L. - S.C. 25549*** wherein it has been held that an FIR cannot be quashed by the High Court under Section 482 of the Cr.P.C. on the ground that Police Station Officer of a particular police station was not having territorial jurisdiction to entertain and to investigate the FIR lodged by the appellant.

5.6 Learned Advocate for the petitioner relied upon a decision of the Apex Court in the case of ***Navinchandra N. Majithia v. State of Maharashtra*** reported in ***AIR 2000 S.C. 2966*** wherein it has been held that the power conferred on the High Courts under Article 226 could as well be exercised by any High Court exercising jurisdiction in relation to the territories within which “the cause of action, wholly or in part, arises” and it is no matter that the seat of authority concerned is outside the territorial limits of the jurisdiction of that High Court.

5.7 Learned Advocate has next relied upon a decision of the Apex Court in the case of ***Central Bureau of Investigation, through S.P., Jaipur v. State of Rajasthan & anr.*** reported in

(2001) 3 S.C.C. 333 wherein it has been held that under Section 156(3) of the Cr.P.C., a Magistrate has no power to direct the Central Bureau of Investigation to conduct investigation into any offence.

5.8 Learned Advocate has next relied upon a decision in the case of ***Y. Abraham Ajit & ors. v. Inspector of Police, Chennai & anr.*** reported in ***(2004) 8 S.C.C. 100*** wherein it has been held that considering Sections 177 & 178 of the Cr.P.C., the general rule is that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed. However, the said rule is subject to several exceptions. On the facts of that case, it was held that the Magistrate concerned had no jurisdiction to deal with the matter as no part of the cause of action for initiation of proceedings against accused arose within his local jurisdiction and the complainant was given liberty to file complaint in the appropriate Court.

5.9 Learned Advocate has next relied upon a decision in the case of ***Mosaraf Hossain Khan v. Bhagheeratha Engg. Ltd. & ors.*** reported in ***(2004) 8 S.C.C. 106.*** In that case, none of the facts

constituting the cause of action, which were required to be proved by the complainant for the purpose of attracting the ingredients of S. 138 of the N.I. Act, arose within the jurisdiction of Kerala High Court and, accordingly, it was held that the Kerala High Court had no jurisdiction to entertain the writ petition.

6. Learned Advocate for the petitioner, therefore, submitted that since no cause of action had arisen within the State of Gujarat and the Mandvi Branch of the respondent – Bank being an independent entity registered under the Maharashtra Co-operative Societies Act, the Courts in the State of Gujarat have no jurisdiction to entertain the complaints. Hence, the investigation is required to be transferred to the police agency in the City of Mumbai.

7. No other contentions have been raised by learned Advocate for the petitioner.

8.0 Mr. K. G. Vakharia learned Sr. Advocate appearing with Ms. Avani S. Mehta for respondent – Bank submitted that the respondent – Bank is registered under the Multi State Co-operative

Societies Act, 2002 under which the Bank is entitled to have its Branches in different States, over and above its State of origin, and that one such Branch is located at Mandvi in the City of Mumbai, Maharashtra. Learned Advocate submitted that the said Branch at Mumbai is also governed by the provisions of the said Act and not by the provisions of the Maharashtra Co-operative Societies Act, as contended by the petitioner.

8.1 Learned Advocate for respondent – Bank submitted that the Board of Management [Administration] constituted by the Central Registrar, Co-operative Societies, Delhi for the purpose of executing the Scheme of Re-construction of the respondent - Bank, as approved by the Reserve Bank of India, had come to the conclusion that lot of irregularities had been committed in the sanctioning of the loan and its disbursement, without following the due procedure as prescribed by the Reserve Bank of India. Learned Advocate submitted that the petitioner, along with the then C.E.O., M.D. and Chairman of the respondent – Bank, had taken loans to the tune of crores of Rupees from the respondent – Bank by violating the Rules and Regulations and without providing sufficient security or having any legal right or authority to avail of

the same. Learned Advocate submitted that for the said irregularities, the respondent – Bank has filed several individual criminal complaints and five such complaints have been filed against the petitioner herein.

8.2 Learned Advocate submitted that so far as the case of the petitioner is concerned, in the complaint itself, specific averments have been made to the effect that the entire procedure of sanctioning of the loan and its disbursement was done from the Head Office of the respondent – Bank at Ahmedabad and that after the loan was sanctioned and on completion of the requisite procedure, necessary intimation was given to the Branch Office of the respondent – Bank at Mumbai for the disbursement of the loan amount, which was only as a consequence of the entire transaction.

8.3 Learned Advocate further submitted that since disbursement was done from the Branch Office of the respondent – Bank at Mumbai, which was only a consequential transaction, it cannot be said that the jurisdiction to entertain any complaint/s arising out of the said transaction lies only with the Courts situated within the City of Mumbai. Learned Advocate submitted that since

the loan was sanctioned at the Head Office of the respondent – Bank, which is situated at Ahmedabad in the State of Gujarat, the cause of action is said to have arisen in the City of Ahmedabad and, therefore, the Courts in the State of Gujarat have jurisdiction to entertain the complaints arising out of the said transaction.

8.4 Learned Advocate for respondent – Bank submitted that after having considered the aforesaid factual aspects, the learned Chief Metropolitan Magistrate, Ahmedabad rejected the Report filed by the Investigating Officer and directed to carry out further investigation and place on record a conclusion as to whether the offence as alleged in the complaint has been committed or not since the investigating agency has no right to give an opinion on the point as to whether a particular Court has jurisdiction to entertain the complaint or not while submitting its Report u/s. 156(3) of the Code. The said order was also confirmed by the revisional Court vide judgment and order dated 22.09.2006. Learned Advocate, therefore, submitted that both the Courts below were also of the view that the cause of action had arisen in the City of Ahmedabad and, accordingly, the Courts below had jurisdiction to entertain the impugned complaints.

9.0 Learned Advocate has relied upon the decision of the Hon'ble High Court of Bombay passed in Writ Petition No. 2551 of 2004 dated 20.10.2004 and, more particularly, on the observations made in Paras 2 & 3, which read as under;

> "2. The petitioners have, in pleadings before the Court, disclosed that in April 1994, the first petitioner availed certain credit facilities from the third respondent at its Mandvi Branch at Mumbai, under which amounts were disbursed by the third respondent to the first petitioner. Thereafter, there is a reference to arbitration proceedings which have been initiated under Section 84 of the Multi State Co-operative Societies Act, 2002. *The petition is conspicuously silent about the extent of the credit facilities that were disbursed by the third respondent and of the nature of the claim filed by the third respondent in respect of the outstandings that are due and payable. During the course of hearing, we called upon Counsel appearing on behalf of the petitioners to disclose before the Court, the extent of the outstanding dues and to take instructions on whether the petitioners were in a position to repay the outstandings in instalments.* Learned Counsel placed on the record, a compilation containing the agreement entered into with the Bank and stated that the present claim of the Bank is to the extent of Rs.5 Crores. *Counsel stated, in response to a query of the Court, that the case of the petitioners is that they are liable to pay only such amounts as are due in accordance with the terms of the agreement. We, thereupon, requested Counsel to take instructions on whether the petitioners would be willing to pay at least what according to them was due and payable.*

Upon taking instructions, Counsel states that the petitioners are not ready and willing to pay anything at all.

3. We have recorded what has transpired before the Court during the course of the hearing because it shows beyond a shadow of a doubt that the petition is not a bona fide petition but merely a attempt to delay and defer the realisation of the dues of the third respondent. The third respondent has taken recourse to its remedies under Section 84 of the Multi State Co-operative Societies Act, 2002. The contention of the petitioners is that Section 84(3) is ultra vires in so far as it renders a decision of the Arbitrator on the question as to whether a dispute touches the constitution, management or business of a Multi State Co-operative Society as final and such that would not be called into question in any Court. We are of the view at this stage it would be premature for this Court to decide the question of the constitutional validity of Section 84(3). Arbitration proceedings have been initiated under the Act and we leave it open to the petitioner to raise all appropriate defences. We also keep open the remedies of the petitioners after the award of the Arbitrator. *We see no reason to exercise our writ jurisdiction at the present stage, particularly in the light of the obdurate refusal of the petitioners to make even a bona fide attempt to repay the outstanding dues of the Bank*. The petition shall accordingly stand dismissed".

9.1 Learned Advocate for respondent – Bank submitted that the Hon'ble High Court of Bombay has also come to the conclusion that though the petitioner is liable to pay huge amount towards outstanding loan to the respondent - Bank, he is not ready and

willing to pay the same. Learned Advocate submitted that the said conduct of the petitioner clearly shows that his main intention is to prolong the proceedings and to defer the realization of the genuine dues of the respondent – Bank.

10. Heard learned Counsel for the parties and perused the documents on record. The petitioner, original accused no. 2, is one of the Directors of a Company named "*M/s. Daxali Synthetics Private Ltd.,*". On 09.07.2003 the respondent – Bank filed complaints before the Court of learned Chief Metropolitan Magistrate, Ahmedabad against the said Company, the petitioner and several other accused persons, including the then Chief Executive Officer, Managing Director and Branch Manager of the respondent – Bank for offences punishable u/s. 406, 420, 467, 471 and 120-B of the IPC alleging that the petitioner, in connivance with the other accused persons named in the impugned complaints, had misappropriated the funds of the respondent – Bank, by fabricating and creating false documents. The said complaints were numbered as criminal cases before the Court of the learned Chief Judicial Magistrate, Ahmedabad.

11. After perusing the said complaints and since the learned Chief Metropolitan Magistrate was of the view that the misappropriation alleged is of public money and investigation into the alleged offence required collection of several documentary evidences, opinion of Handwriting Expert etc., the investigation was directed to be handed over to the Economic Offences Wing, State CID [Crime] under Section 156(3) of the Code. The said criminal cases were thereafter registered as M. Cases with the State CID [Crime], Gandhinagar Zone Police Station, Gandhinagar.

12. Pursuant to investigation into the alleged offence, the investigating agency filed 'C' Summary Reports stating that as the alleged offence has been committed within the territorial limits of the City of Mumbai, the investigation may be transferred to the police agency of Mumbai. However, the learned Chief Metropolitan Magistrate, Ahmedabad rejected the said Reports so filed vide order dated 31.05.2006 and directed the investigating agency to come to a definite conclusion as to whether the offence as alleged in the impugned complaints has been committed or not. It may be noted that while rejecting the said 'C' Summary Reports, the learned Chief Metropolitan Magistrate observed that the investigating agency

only has to state the outcome of the investigation conducted pursuant to an order passed u/s. 156(3) of the Code and that it has no authority or right to state as to which Court has jurisdiction to inquire into the alleged offence in question.

13. It is a settled proposition of law that when a Magistrate directs to conduct investigation while exercising powers u/s. 156(3) of the Code, the main duty of the investigating agency is to submit a Report as to whether the offence as alleged has been committed or not. Thereafter, it is upon the Court concerned to accept such Report or not. In the present case, the investigating agency, being the State CID [Crime], pursuant to the order passed u/s. 156(3) of the Code, has submitted 'C' Summary Reports stating that since the alleged transactions have taken place within the territorial limits of the City of Mumbai, no cause of action had arisen in the State of Gujarat and, therefore, the investigation be transferred to the police agency of Mumbai. The investigating agency has no authority under the law to express its opinion on the merits of a case. It has simply to submit a Report stating as to whether offence as alleged in the impugned complaint has been committed or not pursuant to the investigation done u/s. 156(3) of the Code. In my opinion, the trial

Court has rightly rejected the 'C' Summary Reports filed by the investigating agency as it has no authority to express its opinion on the merits of the case. Even otherwise, in view of the provision of Section 181(4) of the Code, the respondent – Bank was justified in filing the impugned complaints before the Court of learned Chief Metropolitan Magistrate, Ahmedabad.

14. It is not in dispute that the Head Office and the Registered Office of the respondent – Bank is located at Ahmedabad. Being a Bank registered in the State of Gujarat under the provisions of the Multi State Co-operative Societies Act, 2002, it is entitled to have Branches in different parts of the State as well as other parts of the country and one such Branch is located at Mandvi in the City of Mumbai. Therefore, the Mandvi Branch of the respondent – Bank cannot be said to be an independent entity and, in no case, a body registered under the provisions of the Maharashtra Co-operative Societies Act which is a State Act. Hence, the contention raised by the petitioner that the Mandvi Branch of the respondent – Bank is an independent entity is misconceived.

15.0 The main grounds on which investigation is sought to

be transferred are that the documentation was done at Mumbai, the property against which the loan was taken is in Mumbai, the Loanee has a Bank Account in the said Branch in Mumbai and that the loan amount was also disbursed by the said Branch in Mumbai. Pursuant to the closure of the respondent – Bank on 13.03.2001, the Board of Management [Administration] formed by the Central Registrar, Co-operative Societies, Delhi for the purpose of executing the Scheme of Re-construction as approved by the Reserve Bank of India, after going through the records of the respondent – Bank and after conducting necessary inquiry, came to the conclusion that lot of irregularities had been committed in the sanction / disbursement of the loans and that crores of Rupees of the respondent – Bank had been misappropriated. From such investigation, it was also revealed that the petitioner, by joining hands with the then Chief Executive Officer, Managing Director and Chairman of the respondent – Bank, had directly filed his application for the grant of loan at the Head Office of the respondent – Bank at Ahmedabad instead of filing it at the Mandvi Branch of the respondent – Bank in Mumbai.

15.1 It is a matter of record that the application of the petitioner for the grant of loan was approved by the respondent –

Bank by passing Resolution No. 13 at the Head Office of the respondent – Bank in Ahmedabad. Apart from that the application of other accused persons praying to join them as Members in the respondent – Bank, was also approved by the respondent – Bank, by passing Resolution No. 23 at its Head Office in Ahmedabad. The documents at Annexure-B to the Affidavit-in-reply filed on behalf of the respondent – Bank are the copies of the said Resolution and the Minutes of the Meeting held at the Head Office in Ahmedabad. From the said documents, it is amply clear that the loan availed by the petitioner was sanctioned at the Head Office of the respondent – Bank in Ahmedabad. Thus, the entire procedure with respect to approval of the loan application and its sanction thereof was done at the Head Office of the respondent – Bank in Ahmedabad. Only as a consequence of the entire transaction, the disbursement of the loan amount was done from the Mandvi Branch in Mumbai. Hence, it cannot be said that no part of the cause of action has arisen in the State of Gujarat.

15.2 The power conferred on the High Courts under Article 226 could as well be exercised by any High Court exercising jurisdiction in relation to the territories within which "*the cause of*

action, wholly or in part, arises" and it is no matter that the seat of the authority concerned is outside the territorial limits of the jurisdiction of that High Court. "*Cause of action*" is a phenomenon well understood in legal parlance. It is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a Court or a Tribunal; a group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in Court from another person. Thus, it consists of a bundles of facts, which gives cause to enforce the legal inquiry for redress in a Court of Law. Therefore, in determining the issue of jurisdiction as regards the "*cause of action*", the Court has to consider all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts.

15.3 In the case on hand, no doubt the loan was disbursed from the Mandvi Branch of the respondent – Bank in Mumbai but, the fact remains that the entire procedure with respect to the sanction of loan was done at the Head Office of the respondent – Bank in Ahmedabad. In the aforesaid factual situation, it is almost impossible to hold that not even a part of the entire cause of action

has arisen in the State of Gujarat so as to deprive the Courts in the State of Gujarat to entertain the impugned complaints on the ground of jurisdiction.

16.0 It may further be noted that even otherwise the Court of learned Chief Metropolitan Magistrate, Ahmedabad before which the impugned complaints have been filed, has no jurisdiction to transfer the investigation to a police agency outside the State of Gujarat. As has been held by the Hon'ble Apex Court in ***Central Bureau of Investigation through S.P., Jaipur's*** case (supra) what is contained in sub-section (3) of Section 156, is the power of a Magistrate to order an “officer in charge of a police station” to conduct an investigation referred to in sub-section (1) because the words “order such an investigation as above mentioned” in sub-section (3) are unmistakably clear as referring to the other sub-section. The two expressions “police station” and “officer in charge of a police station” have been given separate definitions in the Code in Sections 2(o) and 2(s) respectively. A place or post declared by the Government as police station, must have a police officer in charge of it and if he, for any reason, is absent in the station house, the officer who is in the next junior rank present in the police

station, shall perform the function as officer in charge of that police station. The primary responsibility for conducting investigation into offences in cognizable cases vests with such police officer.

16.1 Section 156(3) of the Code empowers a Magistrate to direct such officer in charge of a police station to investigate any cognizable case over which such Magistrate has jurisdiction. Though a Magistrate under Section 156(3) can only direct an officer in charge of a police station to conduct such investigation and not a superior police officer, nevertheless, when such an order is passed, any police officer superior in rank of such officer, can as well exercise the power to conduct an investigation and all such investigation would then be deemed to be the investigation conducted by the officer in charge of a police station. It is permissible for any superior officer of police to take over the investigation from such officer in charge of the police station, either suo motu or on the direction of the superior officer or even that of the Government. However, the magisterial power cannot be stretched under Section 156(3) beyond directing the officer in charge of a police station to conduct the investigation meaning thereby, that the magisterial Court while exercising powers u/s.

156(3) of the Code cannot direct any particular agency to conduct investigation into a case than to the agency as provided in the Code. Thus, the Court of learned Chief Metropolitan Magistrate, Ahmedabad has no jurisdiction to transfer investigation to a police agency outside the State of Gujarat. If the Court of learned Chief Metropolitan Magistrate, Ahmedabad has no powers to transfer the investigation to a police agency outside the State of Gujarat, then it will not be appropriate for this Court to grant the said relief while exercising powers under Article 226 of the Constitution of India. Hence, the reliefs as claimed for by the petitioner are misconceived and cannot be granted.

17. It is a matter of record that the petitioner has moved the Hon'ble High Court of Bombay by way of a writ petition praying for a declaration that the provisions of Section 84(3) of the Multi State Co-operative Societies Act, 2002 be declared as unconstitutional and void; that the arbitration proceedings instituted against the petitioner by the respondent – Bank before the Joint Registrar of Co-operative Societies, Gujarat be quashed and set aside and that the order of appointment of the fourth respondent therein as an Arbitrator be directed to be withdrawn. While disposing of the said

Writ Petition vide judgment and order dated 20.10.2004, the Hon'ble High Court of Bombay has in clear terms recorded the refusal of the petitioner to make even a bona fide attempt to repay the outstanding dues of the respondent – Bank which the Hon'ble High Court has termed as '*obdurate*'.

17.1 As has been recorded by the Hon'ble High Court of Bombay in its order, the petitioner has not disclosed the extent of credit facilities that were disbursed by the respondent – Bank and the nature of claim filed by the respondent – Bank in respect of the outstandings that were due and payable. On a query being put by the Hon'ble High Court of Bombay, it was stated by the learned counsel appearing on behalf of the petitioner before the Hon'ble High Court of Bombay that the petitioner is liable to pay only such amounts as are due in accordance with the terms of the Agreement.

18. However, the clear refusal of the petitioner to pay at least what according to him was due and payable is nothing but, a clear attempt on the part of the petitioner to delay and defer the realization of the legitimate dues of the respondent – Bank. By praying to transfer the investigation to the police agency in

Mumbai, the main intention of the petitioner appears to be to delay the proceedings and thereby, to deprive the respondent – Bank of its legitimate dues. The funds which are alleged to have been misappropriated / siphoned off by the petitioner and other accused persons are undoubtedly money belonging to the public. This Court in order to advance the cause of justice and with a view to ensure that proper accountability of the public money is obtained has to make sure that investigation is carried out by the appropriate agency in the right manner so that the culprits can be put to task and dealt with in accordance with law.

19.0 The decisions relied upon by learned Advocate for the petitioner in *Shamrao Vithal Co-operative Bank Ltd.* (supra), *Sri Commen Koshy* (supra), *Jai Prakash* (supra), *S. R. Sharma* (supra), *Navinchandra N. Majithia* (supra) and *Y. Abraham Ajit* (supra) cases shall not apply to the case on hand inasmuch as in this case, as discussed hereinabove, the cause of action has taken place in Ahmedabad since the loan was approved at the Head Office of the respondent – Bank in Ahmedabad and only as a consequence of the entire transaction, the loan amount was disbursed from the Mandvi Branch of the respondent – Bank in Mumbai. Thus, the said

decisions relied upon by the petitioner will not be of any help to the petitioner.

19.1 So far as the decision relied upon by the petitioner in *Satvinder Kaur's* case (supra) is concerned, the same shall also be of no assistance to the petitioner inasmuch as in that case the Apex Court has held that an FIR cannot be quashed by a High Court u/s. 482 of the Code on the ground that the Police Station Officer of a particular police station was not having territorial jurisdiction to entertain and to investigate the FIR. However, the same are not the facts of the case on hand. Here, the relief claimed by the petitioner is to transfer the investigation to the police agency in Mumbai under Article 226 of the Constitution of India on the ground that no cause of action has arisen in the State of Gujarat. Now, since it is well established that the cause of action, in the present case, has taken place at Ahmedabad, the said decision also will not apply to the case on hand.

19.2 The decision relied upon by the petitioner in *Mosaraf Hossain Khan's* case (supra) shall also not apply to the case on hand inasmuch as in that case the facts were that the registered Head

Office of the respondent Company was at Ernakulam in Kerala, the amount due under the cheques in question was meant to be payable at Ernakulam and that payment in respect of one of the dishonored cheques was later sent from Ernakulam. In that case, no part of the cause of action had arisen in the State of Kerala and, therefore, it was held that the High Court of Kerala had no jurisdiction to quash a complaint lodged in the State of West Bengal. The facts in this case are vastly different. In this case, the amount of loan, as discussed hereinabove, is sanctioned at the Head Office of the respondent – Bank in Ahmedabad and, therefore, essentially the cause of action has arisen in the State of Gujarat. Thus, the said decision also will not apply to the case on hand.

20. It may be noted that the petitioner has not prayed for the transfer of proceedings from the Court of learned Chief Metropolitan Magistrate, Ahmedabad to a competent Court in the City of Mumbai. The main relief that is sought for in these proceedings is to transfer the investigation to the police agency in Mumbai. Now, unless the proceedings that are pending before the Court of learned Chief Metropolitan Magistrate, Ahmedabad are transferred to a competent Court in the City of Mumbai, no Court in

the State of Gujarat would be in a position to order the transfer of investigation to the police agency in Mumbai.

21. In view of the above discussion and since the amount alleged to have been misappropriated by the petitioner, in connivance with the then Chief Executive Officer, Managing Director and Branch Manager of the respondent – Bank, is public money, it would not be just and proper nor in the interest of justice, to grant the reliefs as claimed in these petitions. If such reliefs are granted, then the same would tantamount to permitting the petitioner to succeed in his ill-designs. Hence, these petitions deserve to be dismissed.

22. For the foregoing reasons, these petitions are dismissed. Rule is discharged. Interim relief stands vacated.

[K. S. JHAVERI, J.}

FURTHER ORDERS

At this stage, learned Advocate for the petitioner requests to extend the interim relief for a further period of three

weeks. Mr. Vakharia learned Advocate for respondent – Bank has strongly objected to the grant of such request. As has been observed by this Court in the earlier part of its judgment, this litigation is nothing but, only an attempt on the part of the petitioner to delay the proceedings and to deprive the respondent – Bank of its legitimate dues and since the amount involved is public money, this Court does not find it fit to extend the interim relief as prayed for by the petitioner. Hence, the request is rejected.

[K. S. JHAVERI, J.]

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